IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.15078 of 2006(O&M)
Date of Decision: 20.3.2007

Surat Singh and others

Petitioners

Versus

Copmmissioner, Rohtak and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Mahavir Sandhu, Advocate for the petitioners

Jasbir Singh, J. (Oral)

C.M. No.3689 of 2007

Application allowed, document Annexure P/12 is taken on record.

CWP No.15078 of 2006

This writ petition has been filed with a prayer to quash the judgment dated 20.9.2005, passed by the Collector, rejecting claim of the petitioners, to declare them as owners of the land, in dispute. Further prayer is to quash order dated 8.6.2006, passed by respondent No.1, vide which, appeal filed by the petitioners was dismissed.

As per records, by stating that the petitioners were owners of the land, in dispute, they moved an application under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (in short, the Act). It was their case that they were co-sharers and

were in possession of the land, in dispute before 26.1.1950. After notice to the Gram Panchayat, evidence was recorded. The Gram Panchayat raised a specific objection to the prayer made, that in view of earlier order passed against them on 8.7.2004, by the District Magistrate-cum-A.C. Ist Grade, Panipat, in which, it was held that the Gram Panchayat was owner of the land, in dispute, the application filed by the petitioners under Section 13-A of the Act, was not maintainable. The Collector, while dismissing their claim on 20.9.2005, has observed thus:-

> *"After hearing the arguments of both sides and perusal of the record, I have reached to this conclusion that the plaintiffs have no right to file suit under Section 13-A because provisions of Section 13-A was made vide Amended Act No.9 of 1999 in the Village Common Lads Act, 1961 (Page 279) wherein besides other conditions it was provided ……. So a proviso has been also added which provides that no suit under this provision will be competent if the proceedings under section 7 has been started or it has already been decided. Since the plaintiffs have been ejected under Section 7 by the Assistant Collector Ist Grade, Panipat vide his order dated 8.7.2004 and it has been decided upto the level of Hon'ble High Court, in such situated, in my opinion, the plaintiffs have no right to file suit according to the Act. Therefore, possession of the disputed land has also been taken from the additional plaintiffs. The ruling produced by the counsel for the plaintiffs is not applicable to this case because, according to the ruling if the question of*

title is raised during proceedings under Section 7 then the question of title is to be decided first. This suit of the plaintiffs is under Section 13-A, therefore, this ruling is not applicable to it. Otherwise also the plaintiffs have produced the khasra girdawari for the year 1963, according to this the possession of the plaintiffs over Khasra No.86/7 is as Gair Mourusi Bila Lagan Mukta Rs.86/- for total year is entered. Similarly, in khasra No.86/13 lagan of Rs.86 and in Khasra No.86/14 Lagan of Rs.25/- is entered whereas earlier to this the Gram Panchayat is shown is cultivation and possession of the suit land and as such, the plaintiffs have no right to file suit. Under these situations, the suit of the plaintiffs is dismissed."

They failed in appeal. Before this Court, by making reference to document Annexure P/12, i.e. order dated 8.7.2004, an attempt was made to say that no question of title was raised and decided when ejectment application was allowed against the petitioners vide order, referred to above. After going through the order, we fail to appreciate the argument raised by counsel for the petitioners. It is apparent from order Annexure P/12 that question of title was specifically raised by the petitioners, by stating that they were owners and the same was decided by the competent Court against them by taking note of the evidence on record. It was specifically held that the petitioners have failed to prove on record that they were in possession of the property, in dispute before 26.1.1950. The Collector, in its order dated 8.7.2004, has observed thus:-

"After hearing the arguments of the counsel for the plaintiff and defendant No.1 to 4 and after careful perusal of the written statement and perusal of the record, I came to the conclusion that the land in dispute is Panchayat Deh as per Ex.P1, the owner of which is Gram Panchayat which was admitted by defendant No.1 in his own evidence Ex.P8. The copy of jamabandi for the year 2001-2002 Ex.R5 produced by the defendant and Ex.P1 i.e. jamabandi for the year 1996-97 produced by the plaintiff does not match with each other, whose numbers are different from each other. Jamabandi produced by the defendant in which Surat Singh has been shown as owner and in self cultivation and Makbooja Malkaan. According to Ex.P4 and P5 produced by the plaintiff, both the parties related to this land has approached the Hon'ble High Court as well as Hon'ble Supreme Court, wherein Hon'ble Punjab and Haryana High Court clearly mentioned in Ex.P5 as that the petitiner had drawn the attention of the Collector to the entries in Khasra Girdawari for the Rabi crops 1950 and the Khasra girdawari for the period khariff 1950 to 1953 produced by the petitioner. In all the Khasra Girdawaries produced by the petitioner, the land is shown to be Banjar Qadim. It means that the land was not being cultivated, under sub clause (VIII) of clause (G) of Section 2 of the act only the land which is in the cultivating possession of a land owner and which fulfills the other requirements, is excluded from the definition of shamilat deh.

Defendants have not adduced any evidence on the file, which can prove that they are in continuous possession of the land in dispute before 26th January, 1950. This land vests in the Gram Panchayat according to Section 2 of the Punjab Village Common Land Act and therefore, defendant No.1 to 4 are proved to be in illegal possession. I am not convinced with this contention of the defendants that this case arise the question of resjudicata. Otherwise also this matter has been decided by me on 11.6.2004. Then also I want to clear that the question of resjudicata arises when both the parties or party filing the suit are same. But in this matter, the situation is totally different because the present plaintiff is not the same party in the case earlier filed by the Gram Panchayat, Gwalra. That case was titled as Gram Panchayat, Gwalra versus Rupla and now the case has been filed against the defendants by the Gram Panchayat. So in such situation, question of resjudicata does not arise in the case. Otherwise also the counsel for the defendant in Ex.P8 has clearly stated in the civil court that the land in dispute is under the ownership of Gram Panchayat. As far as according to the statement of plaintiff that case includes the question of rights or no truth in it because no such document has been produced by them by which it can be proceed that the defendants are in continuous possession of the land since 26.1.1950. Therefore, I hereby order ejectment of the defendant No.1 to 4 from the land in dispute and there is provision to impose a fine of Rs.5000/- to 10000/- per hectare per annum for illegal possession. Accordingly, I hereby order

to recover a fine of Rs.10,000/- per hectare per annum upon the defendant No.1 to 4 for the last three years as per above mentioned provision. The file be consigned to the record after due compliance."

It has been admitted before us that against the order dated 8.7.2004, appeal was filed, which was dismissed and thereafter even a Civil Writ Petition was got dismissed as withdrawn. We feel that if the Collector has not decided the question of title, in a proper manner, when order dated 8.7.2004 was passed, the petitioners should have raised that question before the appellate Court or before this Court. Once they failed against the order, referred to above, it is not open to them to raise question of title again, by invoking the provisions of Section 13-A of the Act.

Perusal of the record further shows that it is a classic case where the petitioners have mis-used the process of law, to continue in unauthorized occupation of the land, which actually, belongs to the Gram Panchayat. Initially, ejectment application was allowed against father of the petitioners, however, on technical grounds, that could not be executed. The petitioners, then went to the Civil Court and thereafter, ejectment application was filed against them also, which was allowed, however, the same again could not be executed. Third time, ejectment application was allowed on 8.7.2004, after failing upto this Court, they then initiated proceedings under Section 13-A of the Act and continued to stick to possession of the land, in dispute, for many years, in that process. We feel that their action is malafide and deserves to be deprecated.

In the earlier litigation before the authorities under the Act and also before the Civil Court, the petitioners had admitted ownership of the Gram Panchayat.

In view of facts mentioned above, the writ petition stands dismissed.

The Gram Panchayat is directed to execute the order of ejectment, passed against the petitioners, forthwith.

The Registry is directed to send a copy of this order to the Gram Panchayat and also to the Deputy Commissioner, Panipat.

(Jasbir Singh)
Judge

March 20, 2007 **(Nirmal Yadav)**
gk **Judge**